IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10519 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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DEPUTY EXECUTIVE ENGINEER

Versus

PURJYABHAI BHULABHAI VASAVA

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Appearance:

1. Special Civil Application No. 10519 of 2002

MR SV PARMAR for Petitioner No. 1

MS PREETI S PARMAR for Petitioner No. 1

MR BIPIN I MEHTA for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 18/08/2004

ORAL JUDGEMENT

1.1 The petitioner by way of this petition has

challenged the judgment and award of the Labour Court dated 10-7-2002 in Reference No.53 of 1989 whereby the Labour Court has partly allowed the Reference filed by the respondent-workman and has directed the petitioner to reinstate the respondent-workman to his original post without back wages but with continuity of service.

2.1 Mr. Parmar, learned Counsel for the petitioner has submitted that the responent-workman was originally appointed as daily wager in 1983 and from 1st September, 1991 he was placed in the payscale of Rs.950-1500 pursuant to the Government Resolution dated 17th October, 1988. Subsequently in May 1995 for getting higher payscale, the respondent-workman has produced forged marksheet which is at Annexure "B" to the petition. Though he has failed, he has misrepresented and on account of such conduct the petitioner was relieved from the services.

2.2 It is contended by Mr. Mehta, learned Counsel for the respondent that in the written statement the respondent-workman has specifically contended that he was never relieved from the services but he himself has abandoned from resuming duties with effect from 1st November, 1995 and for the first time on 4th August 1997 he preferred an application Exh.52 before the authorities seeking permission to resume duties.

2.3 From the record of this petition, it is clear that the respondent workman came to be relieved from the service in view of the forged document of marksheet produced by him.

3.1 Mr. Parmar also contended that it is an admitted position that the respondent-workman has not passed the S.S.C.Examination in view of the certificate produced at Annexure "A" to the petition which fact is disputed by Mr. Mehta.

3.2 Mr. Mehta contended that nonetheless the action of the petitioner relieving the respondent-workman on the ground of fraud is without any justification, as no reasonable opportunity of hearing was given to him, more so, when the respondent-workman was in regular employment enjoying all the benefits.

4.1 Mr. Parmar next contended that the respondent-workman is bound to repay the amount received by him on account of the difference in higher payscale which he has secured by producing such forged marksheet. He submitted that the respondent-workman was not entitled

for such higher payscale and the difference thereof needs to be recovered, after giving him notice, and by granting him reasonable installments for repayment if required.

5.1 Having perused the entire record of the case, as also, considering the submissions made by the rival parties, I have no hesitation in holding that the findings recorded and the conclusions arrived at by the Labour Court in granting reinstatement to the respondent-workman without back wages but with continuity of service is quite just and proper, but the Labour Court has committed an error in reinstating him to his original post. In my view, therefore, the respondent-workman should have been reinstated in the payscale which he was getting prior to the presentation of the forged marksheet.

6.1 In that view of the matter, the petition is partly allowed, The order of the Labour Court is modified to the extent that the respondent-workman shall be reinstated to the post in the payscale of Rs.750...without any back wages but with continuity of service. The award of costs is quashed and set aside. Rule is made absolute accordingly.

If the respondent-workman resumes duty on 1st September, 2004, he may be permitted to do so.

(K.S.Jhaveri,J.)

stanley-ksj.